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SUPREME COURT, U.S.

No. 80-251

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979

LOUIE L. WAINWRIGHT,
Secretary, Department of
Offender Rehabilitation
[Department of Corrections],
State of Florida,

Petitioner,

vs.

JAMES ROBERT SCOTT, JR.

Respondent.

RESPONDENT'S MOTION FOR
LEAVE TO PROCEED IN FORMA PAUPERIS

RICHARD A. BELZ
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FLORIDA INSTITUTIONAL
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Petitioner,	)
vs.	)
JAMES ROBERT SCOTT, JR.	)
Respondent.	)

RESPONDENT'S MOTION FOR
LEAVE TO PROCEED IN FORMA PAUPERIS

Respondent, James Robert Scott, Jr., moves for leave to proceed in forma pauperis in this cause pursuant to Rule 46, and says:

1. The instant proceeding is a Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit, brought by the Petitioner, Louie L. Wainwright, Secretary, Department of Offender Rehabilitation [Department of Corrections], State of Florida.

2. The proceeding below was an appeal to the United States Court of Appeals for the Fifth Circuit from the denial of Respondent's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. §2254. Scott v. Wainwright, 475 F. Supp. 170 (M.D. Fla. 1979), reversed, Scott v. Wainwright, 617 F. 2d 99 (5th Cir. 1980), rehearing en banc denied, 620 F. 2d 300 (5th Cir. 1980).

3. The Respondent, James Robert Scott, Jr., was granted permission to proceed in forma pauperis by the Honorable Charles R. Scott, Senior United States District Judge for the purpose of pursuing his Petition for Writ of Habeas Corpus. He continued to proceed in forma pauperis on appeal pursuant to the provisions of Federal Rule of Appellate Procedure 24(a) and Rule 8.3 of the Rules of the United States Court of Appeals for the Fifth Circuit.

4. The Respondent, James Robert Scott, Jr., was a state prisoner at the time his Petition for Writ of Habeas Corpus was originally filed in the United States District Court below. He remained a state prisoner during the pendency of his appeal to the United States Court of Appeals for the Fifth Circuit. He remains, at this time, a state prisoner, duly confined by the Petitioner herein, Louie L. Wainwright, Secretary of the Florida Department of Corrections.

5. The Respondent should be permitted to continue to proceed in this cause in forma pauperis, so that he may properly respond through his undersigned attorney who represents him without fee.

WHEREFORE, James Robert Scott, Jr., Respondent in this cause, request this Honorable Court to grant him permission to proceed in forma pauperis.

Respectfully submitted,

RICHARD A. BELZ
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CERTIFICATE OF SERVICE

I, Richard A. Belz, counsel for the Respondent, James Robert Scott, Jr., and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 13th day of August, 1980, I served a copy of the foregoing on Robert J. Landry, Esq., Assistant Attorney General, Park Trammell Building, 1313 Tampa Street - Suite 804, Tampa, Florida 33602 by a duly addressed envelope with first-class postage prepaid.

Richard A. Belz

RICHARD A. BELZ

No. 80-257

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vs.

JAMES ROBERT SCOTT, JR.,

Respondent.

ORIGINAL COPY

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

WHETHER THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT ERRED IN HOLDING THAT THE LAW OF THE FIFTH CIRCUIT, EVEN BEFORE FARETTA V. CALIFORNIA, 422 U.S. 806 (1975), WAS THAT A CRIMINAL DEFENDANT HAD A CONSTITUTIONAL RIGHT TO DEFEND PRO SE.

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ARGUMENT

THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT DID NOT ERR IN HOLDING THAT THE LAW OF THE FIFTH CIRCUIT, EVEN BEFORE FARETTA V. CALIFORNIA, 422 U.S. 806 (1975), WAS THAT A CRIMINAL DEFENDANT HAD A RIGHT TO DEFEND PRO SE.

The Petitioner seeks to have this Honorable Court review the decision of the United States Court of Appeals for the Fifth Circuit and, obviously, seeks an opinion that the decision of this Honorable Court granting criminal defendants the constitutional right to proceed pro se need not be given retroactive effect.

This is, indeed, a worthy argument to make and it should have been made by the Petitioner long ago. However, as will be shown, this has not always been the Petitioner's position.

After Scott exhausted his state remedies by appealing the denial of his motion for post-conviction relief, Scott v. State, 345 So. 2d 414 (Fla. 2d DCA 1977) (A 49-58), he sought review in this Honorable Court and presented the following question:

> Whether the District Court of Appeal of Florida, Second District, erred in finding that the decision of this court granting criminal defendants the right of self-representation at trial, Faretta v. California, 422 U.S. 806 (1975), should not be applied retroactively, where a timely demand for self-representation had been made prior to trial.

Scott v. Florida, 434 U.S. 853 (1977) (Petition for Writ of Certiorari to the District Court of Appeal of Florida, Second District).

Instead of joining in seeking review of this question, the Petitioner herein resisted such action with every resource at

its disposal. After reviewing the cases cited by Scott in support of the Petition for Writ of Certiorari the Petitioner herein said:

> A careful review of these decisions, and others, demonstrates that the question presented is not of substantial interest requiring this Court's consideration.

Scott v. Florida, supra. (Response to Petition for a Writ of Certiorari to the District Court of Appeal of Florida, Second District, page 3). This Honorable Court did, in fact, deny review and it is interesting to note that the Attorney General of the State of Florida now seeks to reverse the position originally taken and requests review.

But, for the same reasons that this Honorable Court accepted the arguments of the Petitioner herein before, this Honorable Court should reject the opposite arguments now.

In any event, there is a greater reason why review of the issues in the instant case is not warranted by this Honorable Court.

When this Honorable Court reviewed the historical and legal basis for the right to self-representation by criminal defendants it performed an exhaustive analysis on the then existing right in all jurisdictions. This Honorable Court noted that Florida already granted the accused the right to represent himself in any criminal trial. Faretta v. California, 422 U.S. 806, n. 9 at 813. This Honorable Court also pointed out that the Florida Constitution explicitly conferred that right (a "right" of which, obviously, Scott was totally deprived). Faretta, supra, n. 10 at 813.

Finally, this Honorable Court clearly recognized that there was a pre-existing right of self-representation in the United States Court of Appeals for the Fifth Circuit and other circuits, Faretta, supra, 816 - 817.

Therefore, there is no need for this Honorable Court to grant review of the instant case. There is diversity among the states and even among the various circuits to be sure. But, what of it. There is diversity on many legal issues within this grand and glorious country of ours and this diversity has already been recognized by this Honorable Court.

The fear raised by the Petitioner, that "the jails to all prisoners tried prior to 1975" will be unlocked, (Petition for Writ of Certiorari herein, page 19), is groundless as can readily be seen.

The United States Court of Appeals for the Fifth Circuit held that its prior holding in Chapman v. United States, 553 F. 2d 886 (5th Cir. 1977) settled the question of self-representation prior to Faretta once and for all. Scott v. Wainwright, 617 F. 2d 99, 103 (5th Cir. 1980) (A 12-14). But, Chapman was based upon MacKenna v. Ellis, 263 F. 2d 35 (5th Cir. 1959), cert. den., 360 U.S. 935 (1959), which this Honorable Court also recognized for the proposition that self-representation, at least in the Fifth Circuit, pre-dated Faretta. Faretta, supra, at 817. Yet, in all of this time (from 1959 in MacKenna or 1977 in Chapman) there has been no deluge of cases brought by inmates in Florida or in any other of the states in the area encompassed by the Fifth Circuit.

Surely, this demonstrates that no important federal question affecting the administration of criminal justice exists and that, again, there is no need for this Honorable Court to grant review of the instant case.

CONCLUSION

For the reasons above discussed, the Respondent, James Robert Scott, Jr., requests this Honorable Court to deny the Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit filed in this cause.

Respectfully submitted,

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